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Asia Watch
A COMMITTEE OF HUMAN RIGHTS WATCH

January 8, 1992 Volume 4, No.1

ASIA WATCH CRITICIZES COMMISSION REPORT ON EAST TIMOR

Asia Watch has studied the preliminary report of the National Commission of Inquiry prepared by the seven-person team appointed by President Suharto to investigate the killings in Dili, East Timor on November 12, 1991, when Indonesian armed forces opened fire on unarmed demonstrators.[1] It has also reviewed the Indonesian press covering the two and a half week long investigation and interviewed people in Dili at the time the investigation was taking place. Based on these sources, Asia Watch concludes that the National Commission's investigation was fatally flawed by the Commission's government ties and by the lack of experience of those involved in conducting investigations of this kind. Given the way the investigation was conducted, its findings as published in the preliminary report -- which take the army's position that security forces fired on demonstrators in self-defense -- cannot be accepted, and the need for an international investigation is all the more urgent.

It is true that the appointment of the Commission was the first time the Indonesian government had ever recognized the need to respond so publicly to international criticism of human rights abuses by the army. It is true that the Commission head, M. Djaelani, appeared to take his assignment seriously according to those who met with him in Dili, and that the preliminary report was critical of security forces whose actions, it said, "exceeded acceptable norms." The report also acknowledged that the official death toll of 19 was far too low. Finally, it is true that two senior commanders, Brigadier General Rudolf Warouw (head of the army's Operational Command for East Timor) and the Bali-based regional commander, Major General Sintong Panjaitan, were sacked after the preliminary report came out. But none of these factors constitute evidence that the investigation was expertly or objectively conducted, and many of the most important questions remain unanswered. Some specific problems with the Commission are as follows:

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[1] "Advance Report of the National Commission of Inquiry into 12 November 1991 Incident in Dili" (unofficial translation made available by the Indonesian Embassy in Washington, D.C.), Jakarta, December 26, 1991. Signed by M. Djaelani, Ben Mang Reng Say, Clementino Dos Reis Amaral, Harisoegiman, Anton Sujata and Sumitro.

For a detailed account of the killings, see Asia Watch, "East Timor: The November 12 Massacre and its Aftermath," December 12, 1991.

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1. Too Much Reliance on Military Sources

The Commission concludes that soldiers at the Santa Cruz cemetery, provoked by the stabbing of an army intelligence officer and a private and by the "provocative belligerence and aggressive attitude of the crowd" fired "spontaneously" to defend themselves, "resulting in excessive shooting." This version of events, which contradicts various foreign eyewitness accounts, was the inevitable result of the way in which the "on-site reconstruction" of the incident was undertaken. According to the Indonesian daily *Kompas* of December 11, 1991, the Commission team went to the cemetery on December 10, accompanied by the assistant chief of intelligence for the regional military command, Colonel Gatot Purwanto. Twenty soldiers from Infantry Battalion 303, one company of which took part in the shooting, took part in the reconstruction, showing the Commission members where they had been standing at the time the firing began. **No one from the side of the demonstrators took part in the reconstruction.**[2] A second reconstruction was conducted later after the first was deemed inadequate, but there are no reports of any demonstrator taking part.

A word should be said about the number of eyewitnesses interviewed by the Commission. The preliminary report says 132 such witnesses were interviewed, an impressive number. But this presumably includes the 26 people in custody in the Dili police headquarters (polwil) whom the Commission visited; 66 people interviewed in the military hospital where they were recovering from their wounds; and the 20 soldiers who took part in the reconstruction. The detainees and hospital patients were in military custody and not necessarily in a position to speak freely; moreover, *Kompas* reported that when the Commission members visited the detainees on December 4, they did not ask the patients many questions except about their health.[3] The detainees, patients and soldiers together comprise all but 20 of the eyewitnesses seen by the Commission, and it is not known how many of the rest were members of the security forces, something that should be clarified in the final report. On December 14, the last day of the Commission's visit to Dili before returning the Jakarta, *Kompas* reported that members were going to meet with 50 people at the local parliament building, but it is not known how many people showed up, how many were eyewitnesses, or whether the interviews were conducted in confidence. Throughout the period of the investigation, the Commission had to contend with the fact that many people, including families of victims, were too frightened to come forward and testify.

When the preliminary report does acknowledge contradictory testimony (such as some witnesses saying the troops fired directly on the marchers and others saying that the firing started only after fighting broke out and a hand grenade was tossed), the Commission makes no attempt to assess the relative validity of the two accounts or explain the nature of the respective sources.

2. No Assessment of Military Behavior

The preliminary report spends three pages accusing the independence movement

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[2] "KPN Saksikan Rekonstruksi Insiden Santa Cruz", *Kompas*, December 11, 1991, p.1.

[3] "Sebaiknya Terima Dulu Utusan dari Sekjen PBB", *Kompas*, December 5, 1991, p.1.

Fretilin of fomenting trouble in Dili since 1989 and listing the various incidents in which "anti-integration" youth engaged in demonstrations. It says nothing about abuses on the part of the Indonesian military since 1975 or even since 1989, saying rather than the army employed an "approach based on love and affection."

It says nothing about troop movements on November 12, although this information may be contained in the final report. How many troops were present on the scene? From which units? Who ordered them there? The last point is crucial, since General Warouw, the operational commander for East Timor, may have been in a meeting with United Nations Special Rapporteur Pieter Kooijmans at the time when troop reinforcements were ordered to the cemetery. The preliminary report refers to "another group of unorganized security personnel, acting outside any control or command" who "fired shots and committed beatings." Who were they, and where were they?

If the statement is accurate, one possibility is that they were members of Battalion 700, whose Deputy Commander, Major Gerhan Lantara, was stabbed. According to the Jakarta newsweekly *Editor*, two platoons from Battalion 700 totalling about 75 men ran to the Santa Cruz cemetery after hearing via a walkie-talkie of Gerhan's stabbing.[4] A local government employee who witnessed the demonstration was quoted in the same issue as saying he heard two army squads and one squad from the Mobile Brigade (Brimob) running behind the demonstrators after the stabbing yelling, "Just shoot! Don't let them get away!" Finally, a policeman interviewed by *Editor* said the trucks full of troops which arrived at the cemetery were from Battalions 700 and 744, not Battalion 303 which in theory had territorial responsibility for Dili and on which press attention has focused. These statements taken together appear to lend credence to the idea that the stabbing led soldiers from Battalion 700 to fire not in self-defense but in deliberate retaliation for the wounding of an officer. But there are still far too many unanswered questions. If these were the "unorganized" security forces, who were the others? If soldiers from Battalion 700 systematically took aim and fired, who were the "unorganized" troops?

The sacking of Generals Warouw and Panjaitan in the aftermath of the report's release is curious, since the report stresses that even the organized security forces were acting "without command" and says the killings were not ordered by nor did they reflect the policy of the government or the armed forces. If Warouw and Panjaitan were not responsible, why sack them? If they or their subordinates did give orders, why does the Commission report otherwise? If the reports which the Commission heard are correct that "troops arrayed in anti-riot formation fired shots aimed directly at the crowd", then it would appear that they were shooting on orders. If so, whose, and what is the evidence?

3. Poor Use of Exhumation as an Investigative Tool

The Commission, accompanied by four military officers, carried out a highly publicized exhumation of one grave at Hera Cemetery, apparently to see whether rumors that bodies had

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[4] "Dari Yon 303 ke Yon 433", *Editor*, Vol.5, No.12, December 7, 1991, p.33.

been tossed in graves without religious rites were true.[5] The preliminary report notes that it was found that the victim "was buried in a coffin, completely dressed in accordance with Catholic tradition." But that should not have been the focus of the investigation.

The graves at Hera contained the bodies of the 19 people of the official death toll. The body of the New Zealand student, Kamal Bhamadhaj, was initially buried here before being exhumed and returned to his family. Who were the other 18? If the Commission was going to go the trouble of exhuming a body, why did they not try to identify it? Who, or which military unit, brought the bodies to the site? Why were 19 bodies selected for burial out of the many more killed? The allegations of bodies dumped without ceremony in mass graves did not refer to the graves in Hera Cemetery; the exhumation seems in retrospect to have been conducted more to exonerate the army of charges of insensitivity to religion than to collect new information.

4. Insufficient Efforts to Assess What Happened to the Others Killed

Commission members did go to areas in Hera, Tasi Tolu, Pasir Putih and Tibar outside Dili where there had been reports of mass graves but the preliminary report concludes that "no evidence could be obtained at these locations in support of these allegations." In fact, Djaelani told reporters that when they got to Tasi Tolu, they did not know where to look.[6] It would have been useful for the report to describe what kind of reports the Commission was working with when they went to the areas in question and who they went with. If Commission members were accompanied by military officers, the chances of getting hard data would have been virtually nil. Of all the information the Commission could collect, the information on mass graves would have been most sensitive and most dangerous for ordinary East Timorese to bring out. While the army could not deny that the killings had taken place at the cemetery because of the presence of foreign eyewitnesses, it could and did reject the idea of mass graves or dumping of truckloads of bodies because no one safely outside East Timor saw actual burials. (An Australian reporter described the site near Tibar in some detail; the Commission made no effort to interview him.) Only those living near the sites would have known the location of those sites in detail, and the possibility and fear of reprisals for giving incriminating evidence would be high. The final report should state the precise nature of the sources for the various accounts of mass graves and an assessment of the Commission's capacity to investigate them.

Even if the likelihood of witnesses coming forward to testify about mass graves was small, the Commission, knowing that this was an issue in East Timor, might have tried to consult experienced investigators from countries where similar reports have surfaced. They could have tried to use a methane probe, easily available from a gas company, for example, which might pick up evidence of decomposing bodies. They could have asked the advice of archaeologists -- a simple instrument called a T-probe to test differences in soil density, often used by archaeologists, could have helped the team in its efforts to locate graves. Another technique that

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[5] According to *Kompas* (December 13, 1991), the officers included the subdistrict military commander for East Dili, Lieutenant Wildan Sayuti; the regional intelligence commander, Colonel Gatot Purwanto, and an army doctor from the local health department, Captain Zeth Lenggu.

[6] "Australia tak Salahkan Indonesia", *Kompas*, December 14, 1991, p.1.

could have been used, although perhaps too expensive, is infrared photography. Failure to detect mass burial sites with such techniques would not be conclusive evidence that the sites did not exist, but it would be evidence of a more thorough investigation.

In a critical omission, the report fails to answer the question, if no evidence could be obtained to support allegations of mass graves, what happened to the other 31 killed (the report admits the death toll was "about 50", still too low by most independent estimates) and some 90 still missing? The report faults the "careless handling" of those who died, saying that *visum et repertum* (autopsies) were performed but the deceased were not identified. What procuedures were in fact followed in performing these autopsies? How many were performed, and by whom? If there were more than 19 autopsies, the Commission should have tried to find out what happened to each and every body. What happened to the bodies after the autopsies were completed? Where are the autopsy reports?

5. Ambiguous Statement on Prosecutions

The preliminary report concludes that action must be taken against all who were involved in the incident suspected of having violated the law, and that those individuals must be brought to trial. Given the publicity about the 26 people in military custody for their involvement in the November 12 demonstrations and five people detained for alleged involvement in an earlier incident on October 28, the report's failure to mention prosecutions of military officers leaves the unfortunate impression that only civilians will be brought to trial.

Conclusions

The preliminary report does raise serious questions about military behavior on November 12, but it is neither thorough nor objective, and the lack of competence of Commission members in investigating a mass killing is all too clear.

The need for an experienced international team of investigators with no connection of any kind to the Indonesian government to undertake its own fact-finding is more critical now than ever before. There is not much time left. Bodies will decay making identification all the more difficult; memory of specific details will fade; the "official version" will be increasingly accepted as fact. The international community must continue to press the Indonesian government for a full and accurate accounting of what happened. The preliminary report deserves no accolades.

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